



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 9, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0179

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 2	5.001 – Standards and Duties 7. Retaliation is Prohibited	Not Sustained (Inconclusive)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 treated him unprofessionally and issued him a parking citation in order to retaliate against him.

SUMMARY OF INVESTIGATION:

The Complainant reported to OPA that, on March 13, 2020, he observed Named Employee #1 (NE#1), a Parking Enforcement Officer (PEO), writing tickets in the vicinity of 1st Avenue and University Street. He felt that this was improper given the “circumstances facing the City” at that time and given that there were not many vehicles parked there. He said that he admonished NE#1. The Complainant told OPA that he did not care for NE#1 given prior parking enforcement activity on NE#1’s part that the Complainant had witnessed. The Complainant stated that, after he admonished NE#1, he heard NE#1 say to another bystander something along the lines of: “I’ll see [the Complainant] around.” The Complainant felt that this was wholly inappropriate. He said that he approached NE#1, asked him what he said, and then took a photograph of him. The Complainant recalled that, several days earlier, NE#1 was about to ticket his car. The Complainant spoke with him and NE#1 referenced a white van owned by the Complainant and asked where it was. The Complainant was surprised that he knew of this. The van had been sitting in front of his home because it was not operational due to damage and had been ticketed multiple times. The Complainant later looked at the tickets and determined that some or all had been issued by NE#1. The Complainant spoke to his neighbor who told him that he saw NE#1 park around the corner and then issue the ticket.

The Complainant also told OPA that, on March 16, 2020, NE#1 again ticketed his white van that was parked outside of his home. He felt that NE#1 purposefully did so in order to retaliate against him. The Complainant said that he called 911 and spoke to a supervisor about this. He said that the supervisor indicated that she did not know why NE#1 was at the Complainant’s residence at the time the ticket was issued. The Complainant noted that he had significant concerns with NE#1’s conduct and felt that it bordered on criminal.



OPA also interviewed the Complainant's neighbor. He told OPA that he was looking out of his kitchen window when he saw a Parking Enforcement vehicle park outside of his home. He told OPA that the PEO stepped out of the vehicle and appeared to be writing a citation. He said that the PEO looked at a vehicle parked in front of the Complainant's house for a second and then placed the citation on that vehicle. He said that he saw a PEO write a citation for another neighbor. He said that he did not often see PEOs in his neighborhood but that it did occur. He had seen a similar vehicle in the past driving through his neighborhood a few minutes prior. He did not know if it was the same PEO. He said that he texted the Complainant after he saw the issuance of the citation.

OPA further interviewed NE#1 and a PEO supervisor. NE#1 told OPA that the first time he ever interacted with the Complainant was on March 13. He believed that he also cited one of the Complainant vehicle's several days earlier but did not speak with or see the Complainant at the time. He stated that, on March 13, he observed the Complainant's vehicle sitting in a passenger loading zone for approximately seven minutes. He cited the vehicle, as well as other vehicles similarly parked. At that point, he was confronted by the Complainant concerning the citation. He said that the Complainant began berating him and told him that he should "die." NE#1 recounted that another community member approached and began arguing with the Complainant.

NE#1 recalled that, on a prior occasion, he cited a vehicle in the Complainant's neighborhood and a woman videotaped him and yelled at him. He believed that this vehicle may have belonged to the Complainant. He stated that the vehicle's tabs were expired. He told OPA that, on March 16, he became aware of a request for service in the vicinity of 14th Avenue West that was made by a community member. While the request was forwarded to another PEO, NE#1 knew that this PEO was not working that day. As such, NE#1 decided to handle the request. He then drove through Magnolia because no one else was conducting enforcement there. He drove by the Complainant's vehicle, which was parked on 29th Avenue West, and saw that the tabs were still expired. He issued a citation. At that time, the Complainant emerged from his home and began yelling at NE#1 and blocked his vehicle. NE#1 recalled that that Complainant said that he was going to call the police and seek a restraining order. NE#1 then called a supervisor and who told him to provide her information to the Complainant. NE#1 then left the scene.

NE#1 verified that, since 2015, the Complainant's two vehicles had received approximately 33 parking citations. These were issued by numerous PEOs. NE#1 issued nine of these, all within the past year, with the first being issued in January 2020. The majority of these citations were written in the vicinity of University Street, including six of the citations issued by NE#1. However, citations were issued in other locations. NE#1 issued three citations in the vicinity of the Complainant's home on February 7, 2020, February 21, 2020, and March 16, 2020.

NE#1 ultimately denied that he made any unprofessional comments to the Complainant, including any comment concerning seeing the Complainant at a later time. He further denied engaging in retaliatory activity towards the Complainant. NE#1 stated that, instead, the Complainant harassed him and later posted screenshots of NE#1 and his wife's Facebook pages on social media while referring to NE#1 as a stalker.

The supervisor confirmed that NE#1 called her and informed her that the Complainant was yelling at him. NE#1 told the supervisor that the Complainant was threatening to call the police and asked what he should do. She spoke to the Complainant who asserted that NE#1 was stalking him and had been rude to him at his place of business. The supervisor believed that she told the Complainant that such stalking was unlikely as NE#1 had been instructed to conduct parking engagement in that area. The supervisor then asked the Complainant if he wanted to make an OPA complaint. The supervisor said that it was not necessarily normal for NE#1 to be in the Complainant's neighborhood given where he was assigned, but she believed that he had been directed to be there.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that NE#1 acted inappropriately when he stated on March 13 that he would see the Complainant “around,” as well as that NE#1 improperly commented on the Complainant’s other vehicle. The Complainant said that this was unprofessional given that the NE#1 later came to his home and cited his vehicle.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*) OPA investigation did not conclusively establish whether NE#1 made the statement attributed to him. NE#1 denied doing so and there was no video evidence or witness accounts that could confirm that he did so. NE#1 asserted that, to the contrary, the Complainant was aggressive towards him. Indeed, the Complainant acknowledged berating NE#1 on March 13. Moreover, OPA finds the Complainant’s posting of personal information concerning NE#1 and his wife on Facebook to constitute questionable behavior and this diminishes OPA’s perception of the credibility of his account.

OPA similarly could not prove that NE#1 went to the Complainant’s home on March 16 with the purpose of retaliating against him. On one hand, even while NE#1 said that he went to the vicinity of the Complainant’s home because of a community member’s request for service, that request was sent to another PEO. Moreover, the request was for a vehicle on 14th Avenue West, but NE#1 ended up driving past the Complainant’s residence on 29th Avenue West. OPA notes that the supervisor told OPA that it was odd for NE#1 to be in that location. OPA further notes that he was in that vicinity on two separate prior occasions even though that was not his zone. While this does not, in and of itself establish misconduct, it certainly prevents OPA from finding that it did not occur. On the other hand, OPA cannot disprove that, as NE#1 indicated, he was in the vicinity of 29th Avenue West for a legitimate enforcement reason and that he did not target the Complainant’s vehicle in order to retaliate against him. In support of this conclusion is that fact that the Complainant has received 33 parking citations since 2015 with the vast majority of those being issued in the past three years. Given that NE#1 issued only some of these citations, it is evidence weighing against a finding of unprofessionalism and retaliation.

Ultimately, as discussed above, OPA simply cannot definitively determine whether NE#1 violated the Department’s professionalism and retaliation policies. Accordingly, OPA recommends that both this allegation and Allegation #2 be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

Named Employee #1 – Allegation #2

5.001 – Standards and Duties 7. Retaliation is Prohibited

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.



Recommended Finding: **Not Sustained (Inconclusive)**